

#### **§ 518.39**

Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

#### **§ 518.39 Prior FOUO application.**

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

#### **§ 518.40 Historical papers.**

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

#### **§ 518.41 Time to mark records.**

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

#### **§ 518.42 Distribution statement.**

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 (reference (m)), shall bear that statement and may be marked FOUO as appropriate.

#### **§ 518.43 Location of markings.**

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" in bold letters at least  $\frac{3}{16}$  of an inch high at the bottom on the outside of the front cover (if any), one each page con-

#### **32 CFR Ch. V (7-1-03 Edition)**

taining FOUO information, and on the outside of the back cover (if any).

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(c) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page. The paragraphs containing the "For Official Use Only" information should also be marked with the initials FOUO.

(d) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein. Markings on microform will conform to the requirements of paragraphs (b) and (c) of this section. As a minimum, each frame of a microform containing FOUO information will be marked "FOR OFFICIAL USE ONLY" at the bottom center of the appropriate page or frame. Classified or protective markings placed by a software program at both top and bottom of a page or frame of a computer-generated report are acceptable. Storage media (disk packs or magnetic tapes) containing personal information subject to the Privacy Act will be labeled "FOR OFFICIAL USE ONLY-Privacy Act Information."

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer: "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions \* \* \* apply."

(f) Permanently bound volumes need to be marked only on the outside of the front and back covers, title page, and first and last pages. Volumes stapled by office-type hand or electric staples are not considered permanently bound.